

INTRODUCTORY STATEMENT

The Judicial Council is established under article VI, section 6, of the Constitution of California, and is given various powers and responsibilities to improve the administration of justice.

Judicial Council rules, standards, and orders

Unless otherwise indicated, each rule in these California Rules of Court was adopted by the Judicial Council under its constitutional authority to “adopt rules for court administration, practice and procedure not inconsistent with statute,” or under express authority granted by the Legislature.

Throughout the rules, “shall” and “must” are mandatory, “may” is permissive, and “should” indicates a nonbinding recommendation. “Will” indicates a future contingency or predicts action by a court or judicial officer in the ordinary course of events, but does not signify a mandatory duty. Whenever “must” is used in a new rule or an amendment to a rule with an effective date on or after January 1, 2001, it is synonymous with “shall” as used in the rules before that date.

All of the California Rules of Court have the force of law.

Under its authority granted by article VI, section 6, of the Constitution to “make recommendations to the courts,” the Judicial Council has adopted “Standards of Judicial Administration Recommended by the Judicial Council” (“standards”). They are published in Division I of the Appendix to the California Rules of Court.

The nonmandatory nature of the standards is indicated by the use of “should” instead of the mandatory “shall” or “must.”

Standards make recommendations on practice and procedure, express goals that courts and judges are urged to try to attain, and state guidelines for discretionary action. Even though courts are not obligated to comply with these recommendations, goals, and guidelines, courts should consider them as highly desirable standards of good practice.

A standard might also be found by a court to state the proper boundaries of judicial discretion.

The Judicial Council sometimes disposes of matters within its jurisdiction by orders that are not incorporated into the rules; for example, it might name the counties to participate in a pilot project by order.

The Chief Justice, as Chair of the Judicial Council, is given certain express powers by article VI, section 6, and by statute. For example, article VI, section 6, authorizes the Chief Justice to prescribe the reports courts make to the Judicial Council. This is done by regulations, which have the force of law.

This Introductory Statement is intended to clarify the usual meaning and intent of rules, standards, and orders, and to distinguish among them. It is not intended to be exhaustive or exclusive, and the distinctions expressed here do not bind the Judicial Council in the future.

Judicial Council forms

The Judicial Council adopts and approves legal forms used in the courts.

Under Government Code section 68511, the council may prescribe certain forms. The council “adopts” those forms, and use of those forms is mandatory (rule 201.1(b)(1)).

The council may also “approve” forms. Use of an approved form is not mandatory, but the form must be accepted by all courts in appropriate cases (rule 201.1(c)(1)).

Forms thus are adopted for mandatory use and approved for optional use. The lower left corner of the first page of each form indicates whether the form is mandatory or optional.

A form adopted or approved by the council is not subject to the requirements of rule 201, which specifies the format of papers filed in the trial courts.

A party may file a “duplicate” of a council form produced entirely by computer (rule 201.1(h), (i)).

Introductory Statement amended effective January 1, 2003; adopted effective January 1, 1992; previously amended effective January 1, 2002.

Drafter’s Notes

1992—The Introductory Statement is to be added at the beginning of the rules of court; it outlines the role of the Judicial Council with regard to rules, standards, orders, and forms.

2002—The Introductory Statement is amended to reflect the recently adopted council policy on the use of “must” instead of “shall.” The amendment also clarifies that local rules declaring optional council forms to be mandatory are preempted by rule 981.1, and reinforces the distinction between forms “adopted” for mandatory use and those “approved” for optional use.